

**SUBMISSION TO THE U. N. HUMAN RIGHTS COMMITTEE CONCERNING  
ONGOING DETENTION AND MILITARY COMMISSIONS INSTITUTED BY THE  
UNITED STATES AT GUANTANAMO BAY**

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## **I. Introduction**

This submission provides details regarding ongoing detention conditions at Guantanamo Bay in violation of Articles 2, 7, 9, and 10 of the Covenant, including the United States government's withholding of necessary medical care for detainees; and ongoing violations of Article 2, 6, 7, 14 and 26 with regards to both arbitrary detention at Guantanamo Bay, and the U.S. Department of Defense's military commissions.

## **II. Reporting Organization**

The Military Commissions Defense Organization is responsible for providing legal services to persons charged in a United States Military Commission, including Guantanamo Bay detainee Ammar al Baluchi. *See* 10 U.S.C. § 938k(c). The Chief Defense Counsel has detailed Alka Pradhan, among others, as counsel for Mr. al Baluchi in the case of *United States v. Khalid Sheikh Mohammad, et al.* (the "9/11 case").<sup>1</sup> This submission does not represent the official position of the United States of America or the Department of Defense. This submission is not based upon classified information, and should not be read to confirm or deny any information the United States considers to be classified. Although this submission includes details specific to Mr. al Baluchi, his experience is representative of other detainees similarly situated at Guantanamo Bay, and particularly the so-called "High Value Detainees" previously held in CIA custody.<sup>2</sup>

## **III. The United States' previous torture of Mr. al Baluchi and other detainees, and current withholding of medical care for resulting medical conditions, violates Articles 2, 7, and 10 of the Covenant**

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<sup>1</sup> See Enclosure 1: Detailing letter of Alka Pradhan.

<sup>2</sup> *See, e.g.*, Opinion No. 89/2017 of the U.N. Working Group on Arbitrary Detention Concerning Ammar al Baluchi, *available at* [https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session80/A\\_HRC\\_WGAD\\_2017\\_89.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session80/A_HRC_WGAD_2017_89.pdf), finding at para. 66 that "while [the Working Group] has specifically addressed Mr. al Baluchi's case, the conclusions reached by the Working Group in this opinion also apply to other detainees in similar situations at Guantánamo Bay" ["WGAD Opinion on Mr. al Baluchi"].

Ammar al Baluchi was disappeared on April 29, 2003, in Pakistan.<sup>3</sup> Over the next 3.5 years, the CIA held him incommunicado and tortured him at five different “black sites.”<sup>4</sup> His torture included:

- Walling: U.S. agents took turns bashing Mr. al Baluchi’s head against a wall, up to 2 hours at a time. At one point, Mr. al Baluchi was used as an on-the-job training prop for interrogation students to be certified on their ability to use the “walling technique.”<sup>5</sup>
- Sleep deprivation: U.S. agents forced Mr. al Baluchi to remain standing and awake, without a break, for up to 82 hours at a time, and repeated for weeks. They blasted music and later used 24/7 fluorescent lights to maintain the cycle of sleep deprivation for 2.5 years.<sup>6</sup>
- Near-drowning: U.S. agents poured freezing water on Mr. al Baluchi, submerging his face and head, after he was forcibly stripped and beaten.<sup>7</sup>

Mr. al Baluchi also endured beatings, threats, food deprivation, and stress positions. For over 3 years had no contact with the outside world, and no idea where he was, or what would happen to him next.

The U.S. government has acknowledged that Mr. al Baluchi’s rendition to the black sites was not legal, and that illegal and unauthorized techniques were used on him.<sup>8</sup> Before his capture, Mr. al Baluchi had no known medical or psychological issues.

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<sup>3</sup> N.Y. Times, “Trial Guide: The Sept. 11 Case at Guantánamo Bay”, (Oct. 11, 2022), *available at* <https://www.nytimes.com/article/september-11-trial-guantanamo-bay.html>

<sup>4</sup> See Public Excerpt of the CIA Report of the Office of the Inspector General Regarding Allegations of Torture by Ammar al Baluchi, *available at* <https://foreverwars.substack.com/p/cia-inspector-general-torture-report> [“CIA OIG Report”]. The torture of the detainee “Ammar” in the Sony film Zero Dark Thirty is based on Mr. al Baluchi’s real torture at a CIA site code-named COBALT in the redacted Executive Summary of the Senate Select Committee on Intelligence Report on the CIA’s Rendition, Detention, and Interrogation Program.

<sup>5</sup> CIA OIG Report at (page) MEA-2C-00000444.

<sup>6</sup> *Id.* at MEA-2C-00000436.

<sup>7</sup> *Id.* at MEA-2C-00000445.

<sup>8</sup> CIA OIG Report at MEA-2C-00000486.

Mr. al Baluchi was transferred to Guantanamo Bay (GTMO) in September 2006. Independent experts<sup>9</sup> concur that his torture and arbitrary detention caused a myriad of severe ailments,<sup>10</sup> including multiple traumatic brain injuries (TBI);<sup>11</sup> chronic pain and sleep disturbances; Post-Traumatic Stress Disorder (PTSD); depression with moderate-severe dysfunction<sup>12</sup>; working memory impairment; gastrointestinal pain and thyroid dysfunction; and double-vision, vertigo, and loss of balance.<sup>13</sup>

In 2018, a volumetric analysis of Mr. al Baluchi's brain showed "abnormalities indicating moderate to severe brain damage" in areas critical for memory formation and retrieval and behavioral regulation—confirming his traumatic brain injury.<sup>14</sup>

Mr. al Baluchi has suffered from chronic back and leg pain because of his torture. In 2017, a spinal lesion was identified on his lumbar 2 vertebrae and an MRI in November 2022 confirmed its progression. Additional studies are required, but the preliminary diagnoses include spinal meningioma or spinal schwannoma. As of June 2023, no definitive diagnosis has yet been provided and the U.S. DoD appears to have no plans for further specialist evaluation.

For over 20 years, the U.S. government has refused to provide Mr. al Baluchi with the comprehensive physical and psychological care he requires as a victim of state-sponsored torture. The former Chief Medical Officer at Guantanamo testified in June 2022 that there are a "multitude of complications" in providing necessary specialized care to detainees.<sup>15</sup> The medical staff refuse to take patient histories, due to the continued classification of detainee torture, which prevents proper

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<sup>9</sup> Independent experts are periodically allowed to examine Mr. al Baluchi, but are prohibited from treating him.

<sup>10</sup> See Petitioner's Motion to Compel Mixed Medical Commission [Dkt. 225], Ex. D: Report of Dr. Xenakis regarding evaluation of Ammar al Baluchi (August 2015), *Al Baluchi v. Austin*, 1:08-cv:2018 (D.D.C.).

<sup>11</sup> *Id.* at Ex. E: Report of Dr. Hanrahan regarding evaluation of Ammar al Baluchi (October 2018), at 5-6.

<sup>12</sup> *Id.* at Ex. G: Report of Dr. Shea regarding evaluation of Ammar al Baluchi (January 2020), at 18.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at Ex. F: Report of Dr. Gur regarding volumetric analysis of al Baluchi MRI (April 2019).

<sup>15</sup> *United States v. Hadi al-Iraqi*, Unofficial/Unauthenticated Transcript of 7 June 2022 at 4259, available at [https://www.mc.mil/Portals/0/pdfs/allIraqi/Al%20Iraqi%20\(TRANS7Jun2022-AM\).pdf](https://www.mc.mil/Portals/0/pdfs/allIraqi/Al%20Iraqi%20(TRANS7Jun2022-AM).pdf).

treatment.<sup>16</sup> There are also a lack of medical resources available at GTMO. For instance, Mr. al Baluchi's previous MRIs showed the growth of the spinal tumor, whose cause is unknown.<sup>17</sup> The MRI machines at GTMO have suffered several "catastrophic failures," often suspending their utility.<sup>18</sup>

Mr. al Baluchi's deplorable conditions of confinement have exacerbated his ailments. After he was transferred to GTMO, Mr. al Baluchi was detained in Camp 7 under the continued operational control of the CIA. Camp 7's conditions were manipulated to continue psychological coercion of the men.<sup>19</sup> In 2021, Mr. al Baluchi and all Camp 7 detainees were transferred to Camp 5, which had previously been used as a "disciplinary" (punishment) facility for "Low Value" detainees.

In March 2022, Mr. al Baluchi sued for a Mixed Medical Commission, an evaluation by a panel of medical experts convened under U.S. Army Regulation 190-8 upon request by any detainee in U.S. custody, to determine fitness for continued detention. The United States government responded by arguing that "security" trumped Mr. al Baluchi's right to such an evaluation, and then arbitrarily excluding AR 190-8 from application to (only) Guantanamo Bay detainees. This matter is still in litigation before the District Court of the District of Columbia.<sup>20</sup>

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<sup>16</sup> Physicians for Human Rights, "Deprivation and Despair: The Crisis of Medical Care at Guantanamo," (June 26, 2019), at 21, *available at* <https://phr.org/our-work/resources/deprivation-and-despair/>.

<sup>17</sup> Mr. al Baluchi underwent a lumbar MRI in 2017 that detected a lesion on his L2 vertebra, measuring 9 x 4 x 3 mm. About 3 years later, in 2021, a second lumbar MRI showed that the lesion had increased in size to 12 x 6 x 5 mm.

<sup>18</sup> N.Y. Times, "At Millions Per Detainee, Guantánamo Prison Stuck in a Cycle of Costly Delays," (Sept. 16, 2022), *available at* <https://www.nytimes.com/2022/09/16/us/politics/guantanamo-bay-prison-cost.html>.

<sup>19</sup> N.Y. Times, "Former C.I.A.-Run Prison Emerges as a New Front in Guantánamo's Legal Saga," (April 21, 2022), *available at* <https://www.nytimes.com/2022/04/21/us/politics/cia-prison-gitmo.html>; *Al Baluchi v. Austin*, 1:08-cv:2018 (Dkt. 245, Petitioner's Status Report), *available at* <https://int.nyt.com/data/documenttools/2023-01-27-petitioner-s-status-report-and-mri-report-as-filed-spine/e03f5c3d12d65be9/full.pdf>.

<sup>20</sup> Middle East Eye, "Guantanamo Detainee Used as 'Prop' for Torture Training Losing Battle for Medical Care," (7 October 2022), *available at* <https://www.middleeasteye.net/news/ailing-guantanamo-detainees-legal-battle-medical-care>.

The United States' intentional withholding of medical care for its own torture victims and exacerbation of medical ailments through substandard confinement conditions constitute ongoing violations of Articles 2, 7 of the Covenant.<sup>21</sup> In December 2022, the Association for the Prevention of Torture, the International Commission of Jurists, the World Organization Against Torture, and Amnesty International released a statement regarding Mr. al Baluchi and other Guantanamo Bay detainees:

*The deprivation of medical and psychological healthcare for a torture survivor held in detention constitutes a violation of the following obligations the USA has contracted under international human rights law:*

- *The prohibition of torture and other cruel, inhuman and degrading treatment under articles 1 and 2 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and article 7 of the International Covenant on Civil and Political Rights (ICCPR);*
- *The right to humane treatment of persons held in detention under article 10 ICCPR;*
- *The obligation to prevent torture and other cruel, inhuman or degrading treatment or punishment under articles 2 and 16 CAT;*
- *The obligation to provide redress and rehabilitation to torture survivors under article 2(3) of the ICCPR and 14 CAT.*

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<sup>21</sup> Amnesty International, International Commission of Jurists, World Organization Against Torture, and Association for the Prevention of Torture, "U.S. Government Must Provide Necessary Treatment for Guantanamo Detainee Ammar al Baluchi, a Victim of its Torture Programme," (Dec. 6, 2022), available at <https://www.icj.org/us-government-must-provide-necessary-medical-treatment-for-guantanamo-detainee-ammar-al-baluchi-a-victim-of-its-torture-programme/>.

Further, in June 2023, the U.N. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (“SRCT”) issued a report<sup>22</sup> in which she found that the current medical conditions at Guantanamo Bay (including inability to provide complex care and lack of independent clinical providers) violated the prohibition against torture and CIDT codified in Article 7 of the Covenant:

*[H]ave resulted in the significant deterioration of the physical and mental health of detainees, compounding post-traumatic symptoms and other severe and persistent health consequences co-related to temporal discontinuities of healthcare provision at Guantánamo Bay. She finds that the cumulative effects of these structural deficiencies amount to, at minimum, cruel, inhuman, and degrading treatment under international law. Moreover, the U.S. Government’s failure to provide torture rehabilitation squarely contravenes its obligations under the Convention against Torture.*<sup>23</sup>

#### **IV. Mr. al Baluchi’s arbitrary detention violates Articles 2, 7, 9, 10, 14, and 26 of the Covenant.**

In 2017, the United Nations Working Group on Arbitrary Detention (“WGAD”) found that, (then) nearly 15 years after Mr. al Baluchi’s initial capture, the United States government had “failed to establish a legal basis for Mr. al Baluchi’s detention at Guantánamo Bay.”<sup>24</sup> The WGAD commented that indefinite detention itself may be a form of torture, and noted that “Mr. al Baluchi is suffering psychological and physical effects from the previous torture and his health is in severe

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<sup>22</sup> Report of the U.N. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism Following Technical Visit to the United States and Guantánamo Bay Detention Facility, available at <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/2023-06-26-SR-terrorism-technical-visit-US-guantanamo-detention-facility.pdf> [“SRCT Report”].

<sup>23</sup> *Id.* at para. 29.

<sup>24</sup> WGAD Opinion on Mr. al Baluchi at para. 69, finding violations of Articles 2, 7, 9, 10 (1), 14 and 26 of the Covenant.

decline. Despite his ongoing suffering, he has not been provided with torture rehabilitation or any other redress, as required” under international law. The WGAD also found that “it is very unlikely that Mr. al Baluchi can effectively assist with, and participate in, his own defense.”<sup>25</sup>

The WGAD specifically noted that Opinion 89/2017’s conclusions also apply to other detainees in similar situations at Guantanamo Bay.<sup>26</sup> The WGAD requested that the United States remedy Mr. al Baluchi’s situation immediately, and further requested both counsel for Mr. al Baluchi and the United States government to provide an update on Mr. al Baluchi’s case within six months. While below-signed counsel provided such an update to the WGAD, the United States has never done so.

Despite the WGAD’s directive to the United States government to release Mr. al Baluchi, Mr. al Baluchi and other remained detained at Camp 7 until 2021. Over time, Camp 7 deteriorated significantly, resulting in crumbling infrastructure, extreme water temperatures, and standing sewage.<sup>27</sup> These poor conditions triggered haunting memories of the dungeons in which Mr. al Baluchi was tortured, while the inability to regulate water temperature re-traumatizes men who were near-drowned with ice water.<sup>28</sup> In 2021, Mr. al Baluchi was transferred to Camp 5, which was designed specifically for solitary confinement--punishment for detainees in “disciplinary status.” He remains there to this day.

The SRCT similarly found that “arbitrariness pervades the entirety of the Guantánamo detention infrastructure—rendering detainees vulnerable to human rights abuse and contributing to

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<sup>25</sup> WGAD Opinion on Mr. al Baluchi at para. 58.

<sup>26</sup> In 2023, the WGAD released Opinions No. 66/2022 and 72/2022 pertaining to detainees Abu Zubaydah and Abd al-Rahim al-Nashiri, similarly finding arbitrary detention and multiple violations of the Covenant.

<sup>27</sup> N.Y. Times, “‘In Bad Shape and Getting Worse,’ Guantánamo Poses Headaches for Biden,” (December 15, 2020), *available at* <https://www.nytimes.com/2020/12/15/us/politics/guantanamo-biden.html>.

<sup>28</sup> Stars and Stripes, “Deteriorating Facilities Draw Scrutiny as Gitmo Eyed for Possible Prisoner Influx,” 9 Feb. 2019, *available at* <https://www.stripes.com/news/deteriorating-facilities-draw-scrutiny-as-gitmo-eyed-for-possible-prisoner-influx-1.568062>.



conditions, practices, or circumstances that lead to arbitrary detention” and that the Guantanamo Bay detention infrastructure remains constituted by . . . ongoing arbitrary detention characterized by fair trial and due process violations.”<sup>29</sup>

The United States’ continued detention of Mr. al Baluchi and other detainees similarly situated, in abusive conditions without established legal basis or effective legal review contravenes Articles 2, 7, 9, 10, 14, and 26 of the Covenant.

**V. The Guantanamo Bay military commissions violate Articles 2, 6, 14 and 26 of the Covenant**

The military commissions at Guantanamo Bay were instituted to prosecute only non-national, Muslim men. The United States government has advanced its position that while the laws of the United States guarantee equal protection to all persons,

The United States understands distinctions based upon race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status — as those terms are used in article 2, paragraph 1 and article 26 — to be permitted when such distinctions are, at minimum, rationally related to a legitimate governmental objective.<sup>30</sup>

The Working Group on Arbitrary Detention, however, noted that the United States has made no submissions regarding how the establishment of the Guantanamo military commissions “which have in practice only prosecuted a select group of Muslim men who are not nationals of the United States, would be a proportionate means of achieving a legitimate objective,”<sup>31</sup> thereby finding violations of Articles 2 and 26 of the Covenant. Additionally, prosecutors intend to seek the death penalty in the 9/11 and *Nashiri* cases, in violation of Article 6 and 7 of the Covenant.

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<sup>29</sup> SRCT Report at para. 49.

<sup>30</sup> WGAD Opinion on Mr. al Baluchi at para. 64.

<sup>31</sup> *Id.*

The following sub-sections provide details regarding further violations of the Covenant by the United States through the administration of the Guantanamo military commissions.

a. Prosecution use of torture-derived evidence

Since September 2019, a dozen witnesses have testified on the defense's motions to suppress the FBI's 2007 "Letterhead Memorandum" (LHM) statements as the product of torture. The LHM statements, taken in early 2007 after the defendants were transferred from the CIA black sites to Guantanamo Bay, constitute the prosecution's primary evidence against the five 9/11 defendants. The witnesses include FBI agents who worked with CIA on black site interrogations and psychologists Drs. Mitchell and Jessen. There are at least another dozen witnesses slated to testify, including former FBI Special Agent Ali Soufan; their testimony on the suppression issue alone is likely to consume another year or more of pre-trial hearings. As explained further below, the judge who heard the first six months of suppression testimony (Military Judge Shane Cohen) has now left the case.

Witness testimony so far has established a close link between the torture program and the FBI; FBI agents who interrogated Mr. al Baluchi in 2007 at Guantanamo had been closely involved in submitting questions for his torture interrogations at the black sites from 2003 onwards.<sup>32</sup> Those same FBI agents then utilized the black site statements to prepare for their 2007 interrogations at Guantanamo. Witness testimony so far also has yielded more details of CIA torture, including the use of unauthorized or excessively violent techniques<sup>33</sup>, that illustrate the intense psychological impact on detainees at the black sites.<sup>34</sup> Witness testimony has made clear that conditions of confinement at

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<sup>32</sup> N.Y. Times, "FBI Agent Testifies That He Sent Questions for CIA Detainees," (Sept. 19, 2019), available at <https://www.nytimes.com/2019/09/19/us/politics/fbi-cia-torture.html>.

<sup>33</sup> National Public Radio, "CIA Used Prisoner as 'Training Prop' For Torture, Psychologist Testifies," (Jan. 23, 2020), available at <https://www.npr.org/2020/01/23/799130233/psychologist-who-helped-create-interrogation-methods-says-cia-may-have-gone-too>.

<sup>34</sup> Lawdragon, "CIA's Architect of Brutal Interrogations Claims He Later Held Hands Of Accused 9/11 Mastermind," (Jan. 31, 2020), available at <https://www.lawdragon.com/news-features/2020-01-31-cias-architect-of-brutal-interrogations-later-held-hands-of-accused-9-11-mastermind>.

Camp 7, where Mr. al Baluchi and the other “High Value Detainees” were detained following their renditions from abroad and during the 2007 FBI interrogations, was intended to replicate black site conditions and maintain the psychological coercion imposed at the other CIA black sites. Finally, Mr. al Baluchi and the other defendants were interrogated at Camp Echo 2, one of two acknowledged CIA black sites at Guantanamo Bay, and where Mr. al Baluchi’s attorney-client meetings are held to this day.<sup>35</sup> The government’s primary evidence against Mr. al Baluchi and the other defendants is the direct product of torture.

b. Lack of Defense Access to Torture Evidence

Nearly nine years after the release of the redacted summary of the Senate Select Committee on Intelligence’s (SSCI) report on CIA torture, security-cleared defense counsel have been barred from accessing the full report or even an unredacted version of the summary. The full report contains a chapter on Mr. al Baluchi’s capture and interrogations, which is critical to ascertaining the impact of torture on his subsequent statements to the CIA and the FBI. Senator Dianne Feinstein, former head of the SSCI, wrote to the military commission in support of defense access to the full report in 2016.<sup>36</sup> On this issue, the WGAD concluded that Mr. al Baluchi has not “been afforded equality of arms” in terms of access to evidence under the same conditions as the prosecution. The Working Group specifically highlighted the fact that a great deal of “potentially exculpatory” information from the CIA black sites has still not been provided to Mr. al Baluchi, finding that, “It is clear from that information that the previous torture by the Agency, and the punitive conditions in which Mr. al Baluchi is currently being held, continues to have an impact upon the fairness of the current military commission proceedings against him.”

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<sup>35</sup> The Intercept, “The FBI Was Deeply Involved in CIA Black Site Interrogations Despite Years of Denials, Guantanamo Defense Lawyer Says,” (11 September 2019) *available at* <https://theintercept.com/2019/09/11/fbi-cia-black-site-guantanamo/>.

<sup>36</sup> *United States v. Khalid Sheikh Mohammad*, AE286S Notice, *available at* [https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(AE286S\).pdf](https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(AE286S).pdf).

c. Lack of presumption of innocence

Regarding Mr. al Baluchi's due process rights, the Working Group found that Mr. al Baluchi's portrayal in the movie *Zero Dark Thirty*, whose filmmakers were assisted by the Central Intelligence Agency,<sup>37</sup> "is highly prejudicial to Mr. al Baluchi's ability to obtain a fair trial," and "there is a serious and ongoing violation of Mr. al Baluchi's right to be presumed innocent." The WGAD further condemned the United States' use of torture-derived statements against Mr. al Baluchi, noting that "these violations of the right to a fair trial are of such gravity . . . that it is no longer possible for Mr. al Baluchi to receive a fair trial."<sup>38</sup>

d. Lack of Judicial Continuity

There have been seven judges over nearly nine years of pre-trial hearings (Military Judges Pohl, Parrella, Cohen, Watkins, Keane, McCall, and Watkins again) in the 9/11 case in which Mr. al Baluchi is a defendant. Military Judge Pohl presided between 2012 - August 2018, then retired after ordering the suppression of the FBI's Letterhead Memorandum Statements (the government's main evidence against the defendants).<sup>39</sup>

Six of those judges presided in the two years between August 2018 and December 2020. Although Military Judge Cohen set a tentative trial date of January 2021 and heard witness testimony on the suppression of the LHM statements, he retired suddenly in April 2020, and several judges have presided since then. The current judge, Col. Matthew McCall, was appointed in July 2021 with no prior experience on the 9/11 case, only access to voluminous transcripts and over 900 motion series

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<sup>37</sup> The Guardian, "Zero Dark Thirty's CIA Access Triggered Internal Agency Investigations," (11 September 2015), available at <https://www.theguardian.com/film/2015/sep/11/zero-dark-thirty-cia-access-three-internal-agency-investigations-kathryn-bigelow-mark-boal>.

<sup>38</sup> WGAD Opinion on Mr. al Baluchi at paras. 51 and 61.

<sup>39</sup> N.Y. Times, "Judge Bars Statements Made by Guantanamo Detainees During FBI Interrogations," (17 August 2018), available at <https://www.nytimes.com/2018/08/17/us/politics/guantanamo-detainees-fbi-interrogations.html>.

(some containing dozens of substantive pleadings each).<sup>40</sup> He has presided over two substantive pre-trial hearings as of June 2023.

e. Failure of plea negotiations in the 9/11 case

In March 2022, prosecutors and defense counsel in the 9/11 case entered into plea negotiations after nearly ten years of pre-trial hearings. Defense counsel jointly submitted a set of “policy principles” governing conditions of confinement for the five defendants for the duration of their sentences at Guantanamo, in the event of a successful case resolution involving guilty pleas. While the policy principles remain primarily confidential, a significant element to Mr. al Baluchi was the inclusion of comprehensive medical treatment for torture-related illnesses suffered by the detainees.<sup>41</sup> In June 2023, prosecutors informed defense counsel that senior officials in the Biden administration were unlikely to “ever” respond to the policy principles. (Without guarantees, the abusive, constantly-changing conditions at Guantanamo Bay will be subject to the whims of the Joint Task Force even in the event of a guilty plea by the defendants.) Defense counsel were informed that if they decline to submit a guilty plea (without assurances regarding conditions of confinement and medical care), the case will return to active litigation, now in the 12<sup>th</sup> year of pre-trial proceedings, as early as September 2023.

The SRCT’s report of June 2023 also found “fundamental fair trial and due process deficiencies in the military commission system,”<sup>42</sup> specifically highlighting failure of equality of arms, “indirect reliance on testimony extracted by torture,” and

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<sup>40</sup> See N.Y. Times, “Trial Guide: The Sept. 11 Case at Guantanamo Bay,” (6 March 2021), *available at* <https://www.nytimes.com/article/september-11-trial-guantanamo-bay.html>.

<sup>41</sup> See, e.g., N.Y. Times (Editorial Board), “Biden Can Close the Extrajudicial Prison at Guantanamo,” (29 April 2023) *available at* <https://www.nytimes.com/2023/04/29/opinion/guantanamo-bay-prison-biden.html>; N.Y. Times, “Judge Signals Impatience A Year Into Sept. 11 Case Plea Talks,” (28 March 2023), *available at* <https://www.nytimes.com/2023/03/28/us/politics/september-11-plea-deal-guantanamo.html>.

<sup>42</sup> SRCT Report at 46.

*an array of procedural obstacles and legitimacy challenges, ranging from issues with interpretation—including due to alleged bias and lack of independence and impartiality—and significant technological failures in the courtroom, to abrupt prosecutor and judge retirements and resignations and conflicts of interest.*<sup>43</sup>

As noted by the WGAD and SRCT, the United States' continued use of the Guantanamo military commissions to attempt prosecutions violates Articles 2, 14, and 26 of the Covenant.

## **VI. Conclusion and Suggested Questions**

Ammar al Baluchi is one of thirty detainees remaining detained at Guantanamo Bay, a facility whose conditions were found in mid-2023 – more than twenty-one years after its opening – to constitute cruel, inhuman, and degrading treatment at a minimum.<sup>44</sup> His medical status continues to decline precipitously, and neither the military commission (which has been suspended since March 2022) nor U.S. federal courts (in which his habeas corpus proceedings are suspended pending the military commission proceedings) have provided remedies in the form of medical care, review of arbitrary detention, or release.

Mr. al Baluchi respectfully requests that the Committee question the United States regarding

1. Whether the United States intends to fulfill the legal obligation to provide comprehensive medical treatment for torture victims at Guantanamo, including the provision of independent medical evaluations (Mixed Medical Commissions) to Mr. al Baluchi and all detainees who request them;
2. The failure of the illegal military commissions system, including the use of torture-acquired evidence and other due process violations, and whether the United States intends to pursue resolution of the ongoing cases in light of these extended violations;

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<sup>43</sup> *Id.*

<sup>44</sup> SRCT Report at para. 18.

3. The findings of the Working Group on Arbitrary Detention calling for the release of Mr. al Baluchi and multiple other detainees on the basis of arbitrary detention and medical conditions stemming from torture.

Enclosure 1





DEPARTMENT OF DEFENSE  
CHIEF DEFENSE COUNSEL FOR MILITARY COMMISSIONS  
1620 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1620

al Baluchi (10018)  
17 November 2015

MEMORANDUM FOR MS. ALKA PRADHAN

SUBJECT: Detailing as Assistant Defense Counsel in the Military Commission Case  
of *United States v. Ali Abdul Aziz Ali (al Baluchi) (10018)*

Refs: (a) R.T.M.C. 9-1(a)(5)  
(b) R.M.C. 503(c)  
(c) R.M.C. 502(d)(7)  
(d) R.M.C. 506(a)

Pursuant to my authority as Chief Defense Counsel under references (a)-(d), upon your signature on the Acknowledgement of Responsibilities, you are detailed as Assistant Defense Counsel to perform, under the supervision of Defense Counsel, the duties of defense counsel and represent the accused in the military commission case of *United States v. United States v. Ali Abdul Aziz Ali (al Baluchi) (10018)*.

A handwritten signature in black ink, appearing to read "J. G. Baker", is positioned above the typed name.

J. G. BAKER  
Brigadier General, U.S. Marine Corps  
Chief Defense Counsel for  
Military Commissions

Attachment:  
Acknowledgement of Responsibilities

cc:  
Learned Counsel  
Detailed Counsel  
MCDO Admin

## ACKNOWLEDGMENT OF RESPONSIBILITIES

I understand and represent that as Assistant Defense Counsel in the case of United States v. Ali Abdul Aziz Ali (al Baluchi) (10018):

1. I am licensed to practice law in the District of Columbia and the State of New York.
2. It is my responsibility to defend my client zealously within the bounds of the law without regard to my personal opinion about his guilt or innocence, and to otherwise carry out the duties of defense counsel articulated in 10 U.S.C. § 949c(b) and the Discussion under Rule for Military Commission 502(d)(7).
3. I will comply with the procedures accorded the accused pursuant to 10 U.S.C. §§ 948a – 948d, the Manual for Military Commissions, and the Regulation for Trial by Military Commission.
4. I have primary responsibility to prevent any conflicts of interest related to the handling of the cases to which I am detailed, including United States v. al Baluchi (10018).
5. I shall fulfill all my responsibilities set forth in the Military Commissions Act of 2009, the Manual for Military Commissions, the Regulation for Trial by Military Commission, and those assigned by Detailed Counsel and the Chief Defense Counsel.
6. I will at all times strictly comply with 10 U.S.C. §§ 949p-1 – 949p-7, Rule for Military Commission 701, Military Commission Rule of Evidence 505, and Chapter 18 of the Regulation for Trial by Military Commission, to ensure that classified and protected information is not disclosed to any person not authorized to receive such information.

I further acknowledge and understand that, pursuant to Rule for Military Commission 505(d), the Chief Defense Counsel may excuse me as Assistant Defense Counsel at any time prior to formation of an attorney-client relationship with Mr. al Baluchi. I also understand that after formation of an attorney-client relationship, that I may only be excused as Assistant Defense Counsel by the Chief Defense Counsel under Rule for Military Commissions 505 with the consent of Mr. al Baluchi or for good cause as determined by the Chief Defense Counsel or when disqualified by the military judge, when applicable, under Rule for Military Commission 901. Given these very limited bases for excusal and the life cycle of Commissions cases, I understand that once detailed, I may remain assigned to the Military Commissions Defense Organization until the conclusion of this case.



MS. ALKA PRADHAN

cc:  
Detailed Counsel  
MCDO Admin